

Title	Capital trials: appointment of counsel and judicial education (approve forms CR-190, <i>Order appointing counsel in capital case</i> , and CR-191; <i>Declaration of counsel seeking appointment in capital case</i> ; adopt Standard of Judicial Administration, section 25.4; and amend rule 4.117.)
Summary	The Criminal Law Advisory Committee is proposing two new forms to assist the courts in appointing counsel in capital cases under rule 4.117 and a standard of judicial administration setting forth recommended training for judges handling capital cases.
Source	Criminal Law Advisory Committee
Staff	Joshua Weinstein, 415-865-7688
Discussion	<p>The two proposed forms (CR-190, <i>Order appointing counsel in capital case</i>, and CR-191, <i>Declaration of counsel seeking appointment in capital case</i>) are designed to assist the court in making an appropriate record regarding the selection of counsel in capital cases. Both would be mandatory forms.</p> <p>The proposed CR-190, <i>Order appointing counsel in capital case</i>, simply memorializes the appointment of counsel, whether counsel is lead or associate counsel, and the basis for the appointment under rule 4.117.</p> <p>The proposed CR-191, <i>Declaration of counsel seeking appointment in capital case</i>, would be completed by counsel seeking appointment in a capital case; counsel would indicate his or her qualifications, warranting appointment. The information to be provided mirrors the requirements for appointment under rule 4.117. Also included on the form is a check box for counsel to indicate that he or she has a declaration on file with the court with his or her qualifications; it is anticipated this would be used when a court maintained a list of pre-qualified counsel for appointment to capital cases.</p> <p>A new subdivision would be added to rule 4.117, providing that the court and counsel must complete forms CR-190 and CR-191 when counsel is appointed in a capital case.</p> <p>Proposed section 25.4 of the Standards of Judicial Administration would set forth the suggested training for judges presiding over capital cases. Two levels of judicial education are suggested: a</p>

comprehensive curriculum for all judges assigned a capital case and a periodic update course for judges to take upon subsequent capital case assignments. A judge should complete the update if he or she has not completed capital case judicial education within two years of the current capital case assignment. The exact parameters of the course would be left for Center for Judicial Education and Research (CJER) to develop, although the standard does provide that the comprehensive curriculum would be “a multi-day course” and the periodic update “may be actual classroom instruction or through video, audio, or other media, as determined by CJER.”

The committee considered, but decided against exempting (or “grandfathering in”) judges with significant capital case experience. Thus, subdivision (b) provides that “When a judge is assigned to a capital case after the effective date of this standard, he or she should have attended the comprehensive training.” The committee appreciated that those judges may not benefit from training as much as less experienced judges. However, the committee concluded that all judges benefit from judicial education and the experienced judge’s presence would also benefit the other attendees.

Another issue considered by the committee was whether training programs by local courts or other entities should qualify under the proposal. The current draft does not include such a provision, but such programs could qualify if CJER co-sponsored the training. The committee would appreciate comments on this issue.

Attachments

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">DRAFT 2</div> <div style="text-align: center; font-size: 2em; font-weight: bold;">3/3/03</div>
<div style="text-align: center; font-weight: bold;">PEOPLE OF THE STATE OF CALIFORNIA</div> <div style="text-align: center; margin-top: 20px;">VS.</div> <div style="margin-top: 20px;">DEFENDANT:</div>	
ORDER APPOINTING COUNSEL IN CAPITAL CASE	CASE NUMBER:

On _____ (date) the court appointed _____ (attorney) as counsel to represent _____ (defendant) in the above entitled case.

The court finds counsel qualified for appointment in this matter:

- ☐ As Lead Counsel under rule 4.117(d) of the California Rules of Court.
- ☐ As Associate Counsel under rule 4.117(e) of the California Rules of Court.
- ☐ As _____ Counsel under rule 4.117(f) of the California Rules of Court.
- The basis for finding counsel qualified under this section are:

Date: _____

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">DRAFT 3</div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;">3/03/03</div>
<div style="text-align: center; font-weight: bold;">PEOPLE OF THE STATE OF CALIFORNIA</div> <div style="text-align: center; margin-top: 20px;">VS.</div> <div style="margin-top: 20px;">DEFENDANT:</div>	
DECLARATION OF COUNSEL SEEKING APPOINTMENT IN CAPITAL CASE	CASE NUMBER:

Declaration of counsel seeking appointment under rule 4.117 of the California Rules of Court.

1. ☐ My qualifications are set forth in the declaration on file with this court.
2. ☐ My qualifications are (*attach additional sheets if necessary*):
 - a. ☐ I am an active member of the State Bar of California.
 - b. ☐ I am admitted to practice *pro hac vice* pursuant to rule 983.
 - c. ☐ I have the following criminal or civil trial experience (specify case name, number, and county and judge, and your role, including whether lead or associate counsel):
 - d. ☐ I have the following experience in death penalty trials (specify case name, number, and county and judge, and your role, including whether lead or associate counsel):
 - e. ☐ I have the following experience with expert witnesses and psychiatric and forensic evidence.
 - f. ☐ I have completed ____ hours of in the past ____ years of specialized training in the defense of persons accused of capital crimes (*specify nature of training*):
 - g. ☐ I have ongoing consultation support from the following experienced death penalty counsel:
 - h. ☐ I am certified by the State Bar of California's Board of Legal Specialization as a criminal law specialist.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

Section 25.4 of the Standards of Judicial Administration would be adopted, effective January 1, 2004, to read:

1 **Sec. 25.4. Judicial education for judges hearing a capital case**

2
3 (a) California Center for Judicial Education and Research (CJER) should provide
4 a comprehensive curriculum and periodic updates on capital cases that
5 include training on California law and procedure relevant to capital cases.

6 The periodic update may be an actual classroom instruction or through video,
7 audio, or other media as determined by CJER.
8

9 (b) When a judge is assigned to a capital case after the effective date of this
10 standard, he or she should attend the comprehensive training specified in (a)
11 before commencement of the trial. Upon a subsequent assignment of a
12 capital case, the judge should complete the periodic update course described
13 in (a) within two years before the commencement of the trial.

Rule 4.117 of the California Rules of Court is amended, effective January 1, 2004 to read:

Rule 4.117. Qualifications for appointed trial counsel in capital cases

(a)-(h) ***

(i) [Order appointing counsel] When the court appoints counsel to a capital case, the court must complete the form CR 190 (*Order appointing counsel in capital case*) and counsel must complete the form CR-191 (*Declaration of counsel seeking appointment in capital case*).